

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No. 7635 of 2015(O&M)

Date of decision: 28.2.2017

Sandeep @ Sonu

....Petitioner

VERSUS

Sevapati @ Sewapati and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ajay Kumar Gupta, Advocate for the petitioner.

Mr. Sunil Saharan, Advocate for respondent No.1.

Mr. Amrik Narwal, DAG, Haryana.

REKHA MITTAL, J.

By invoking Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'), the petitioner prays for quashing of criminal complaint No.323-I/13 titled **Sewapati Vs. Sandeep @ Sonu** for offence punishable under Sections 354, 376, 447, 506 and 511 of the Indian Penal Code, 1860 (in short 'IPC'); summoning order dated 17.11.2014 (Annexure P-2) and proceedings arising therefrom.

Counsel for the petitioner has submitted that fields of the petitioner and complainant are adjoining and families of both the sides are not on good terms. On an earlier occasion, FIR No.656 dated 11.08.2008 for offence punishable under Sections 147, 148, 323, 307, 452, 506 IPC was registered at Police Station Sadar, Hisar at the instance of mother of the petitioner against six accused including husband of the complainant wherein challan was submitted in the Court and the trial is pending before the Court of Additional Sessions Judge, Hisar. It is further submitted that

with regard to occurrence dated 16.11.2012, FIR No.1056 dated 18.11.2012 for offence punishable under Sections 323, 324, 325, 506, 147, 148 IPC was registered at Police Station Sadar, Hisar at the instance of petitioner side wherein Sevapati- complainant, Karambir- her husband and Pawan younger brother of Karambir were charge-sheeted and charge has been framed against them. A cross version vide DDR No.22 dated 22.11.2012 was recorded at the instance of Karambir for offence punishable under Sections 323, 325, 506 read with Section 34 IPC and the challan qua cross case was presented in the Court and is pending trial. It is argued that in the cross version got recorded by Karambir- husband of the complainant, no such allegation with regard to petitioner having attempted to commit rape upon the complainant were raised. More than 7 months after the occurrence dated 16.11.2012, a private complaint was filed in this regard wherein the petitioner has been summoned to face trial for commission of offence punishable under Section 354 and 376/511 IPC by the Court concerned. It is vehemently argued that the complainant party concocted a false story indicting the petitioner of offence punishable under Sections 354 and 376/511 IPC. It is further argued that the Court of Judicial Magistrate without considering the documents on record has passed the summoning order.

Another submission made by counsel is that in the complaint filed by the respondent, there is no reference that an FIR and a cross version with regard to occurrence dated 16.11.2012 was got registered and criminal proceedings are pending in the Court even on the basis of a report lodged by Sh. Karambir Singh. It is vehemently argued that the criminal

proceedings initiated at the instance of the respondent/complainant are nothing but abuse and misuse of process of law and liable to be quashed.

Counsel for the respondent, while refuting contentions of the petitioner, has submitted that at the stage of summoning an accused in a criminal complaint, the Court can neither take into consideration any plea in defence likely to be raised by the accused nor the accused has any locus standi to be heard on the question whether the process should be issued against him or not. It is further submitted that keeping in view the scope of inquiry under Section 202 Cr.P.C. being limited only to the extent of finding of truth or falsehood of the complaint in order to determine the question of issue of process, no error much less illegality can be noticed in the order summoning the petitioner to face trial. In addition, it is submitted that order passed by the Magistrate is a well-reasoned one which takes into consideration the allegations in the complaint as also the evidence adduced in support of it.

I have heard counsel for the parties, perused the paper-book and the original records summoned from the Court below.

Before advertng to the submissions made by counsel for the parties, it is necessary to re-capitulate the principles culled out by Hon'ble the Supreme Court of India in **Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others, AIR 1976 SC 1947** wherein the Court has relied upon its earlier judgments in **Chandra Deo Singh Vs. Prokash Chandra Bose, (1964) 1 SCR 639** and **Vadilal Panchel Vs. Dattatraya Dulaji, (1961) 1 SCR 1** to say that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”

Reverting to the case at hand, perusal of the allegations raised in the complaint would make it evident that there is no reference that a cross version was got recorded by husband of the complainant with regard to an occurrence dated 16.11.2012 vide DDR No.22 dated 20.11.2012 much less the status of those proceedings. The complainant by way of statement of her counsel exhibited two documents Ex.PA and PB. One of the documents marked as Ex.PW/B in the testimony of the complainant is not at all legible. The Court of Magistrate did not advert to any of the document exhibited on record while recording its observations that there is sufficient ground for proceeding against the accused under Section 354 and 376 read with Section 511 IPC. A relevant extract from para 5 of the summoning order, reads as follows:-

“5. In her testimony complainant has specifically alleged that when she was picking up the cotton crop, then the accused caught her hold from back and put her down. Thereafter, he broke the sting of her salwar and

started touching her private parts. She made a hue and cry. PW2 and PW4 also corroborated the entire averments of the complainant as narrated by her in her evidence. Therefore, the averments as detailed in the complaint as well as from the testimony of complainant and other witnesses supported by the medical evidence and the documents so placed on record by the complainant, there is sufficient ground for proceeding against the accused Sandeep under Sections 354 of IPC and 376 read with Section 511 of IPC. Let the accused be now summoned accordingly for 21.1.2015 on filing of PF and copy of complaint etc.”

The Court even did not bother to examine the contents of DDR No.22 dated 20.11.2012 Ex.PB much less to know the status of the said DDR lodged at the behest of husband of the complainant with regard to an occurrence dated 16.11.2012 particularly when the complaint filed by the respondent also pertains to an occurrence of the same date and time i.e. 16.11.2012 at 10 AM. This apart, had the complainant disclosed that a cross version was got recorded by her husband with regard to occurrence dated 16.11.2012 at 10 AM, there was every possibility of the Court having sought a report from the police with regard to investigation in the said DDR in view of the provisions of Section 210 Cr.P.C.

Keeping in view the fact that the complainant concealed a material fact with regard to version of her husband having been recorded by the police with regard to occurrence dated 16.11.2012 and there being no plea in the complaint that the said version was not correctly recorded by the police coupled with that the Court of Magistrate did not take into consideration the documents exhibited on record, it clearly shows that the summoning order smacks of non-application of mind, thus, liable to be set aside.

For the foregoing reasons, the petition is partly allowed.

Order dated 17.11.2014 (Annexure P-2) is set aside and the matter is

remitted to the Court below for passing a fresh order in the light of observations made hereinbefore but by taking into consideration the materials on record. It is clarified that the petitioner shall not be entitled to be heard at this stage whether the process should be issued against him or not.

FEBRUARY 28, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no